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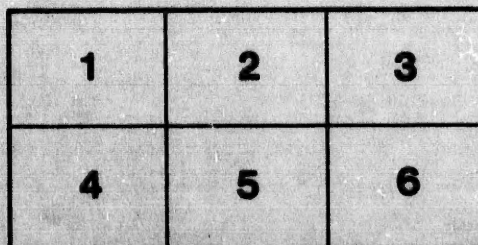
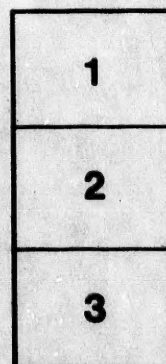
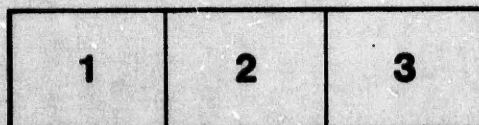
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(N. 357 / 63)

Copy of opinion of Judge Mason, of the Supreme Court of New York, Samuel Sherwood and Marshal S. Bidwell, Councillors, on the legal construction of the 7 Vic. Cap. 34, submitted by the Shareholders of the Welland Canal Company.

Also of a case, submitted by the Agents of the Shareholders residing in England, with the legal opinion of the Law Officers of the Crown thereon :

- 1st. Copy of the Act authorizing the purchase of the private shareholder in the Welland Canals, 7 Vict. 34.
- 2nd. Opinion of Judge Mason.
- 3rd. " of Samuel Sherwood, Esquire.
- 4th. " of Marshal S. Bidwell.
- 5th. Copy of the case submitted by the English Shareholders.
- 6th. Opinion of Sir Frederick Thesiger, former Attorney General of England and H. J. Bushby, Esquire, 24th August, 1852.
- 7th. Opinion of Sir Fitzroy Kelly, Solicitor General of England, and letter enclosing same 15th October, 1852.
- 8th. Opinion of Sir Alexander E. Cockburn, present Attorney General of England, with letter 5th November, enclosing the same.

COPY OF ACT.

An Act to repeal a certain Act therein mentioned, and to make further provision for enabling the Provincial Government to purchase the Stock held by private parties in the Welland Canal.

[9th December, 1843.]

WHEREAS in and by a certain Act of the Parliament of this Province, passed in the fourth and fifth years of the Reign of Her present Majesty, intituled, *An Act to authorize the Stock, held by private parties in the Welland Canal, to be purchased on behalf of the Province*, after reciting that it was desirable to place the Welland Canal under the exclusive control of the Government of this Province, and for that purpose to provide for the purchase from the private Stockholders in that work of the stock by them held, and which amounted to the sum of One Hundred and Seventeen Thousand, Eight Hundred Pounds, it was, amongst other things, enacted that it should and ought to be lawful for Her Majesty's Receiver General, upon an order to that effect from the Governor, Lieutenant Governor, or person administering the Government of this Province, to issue such number of Debentures as might be required to the several Stockholders in the Welland Canal for a sum equal to the amount of stock held by him or them, and that such Debentures should be made redeemable in twenty years from their date, and should bear an interest of two per cent. per annum on the amount for which they might be issued, for the first two years, three per cent. for the third year, four per cent. for the fourth year, five per cent. for the

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Prov. Secretary's Office, C. W.
No. 896 of 1853

fifth year, and six per cent. for the sixth and following years, which interest and principal sum should be chargeable on and payable out of the public revenues of the Province, and that whenever the tolls collected on the said Canal should annually amount to the sum of Thirty Thousand Pounds, it should be lawful for the Governor, Lieutenant Governor, or person administering the Government to authorize and direct the Receiver General of this Province to issue other Debentures to the original Stockholders, or their legal representatives, for such sums as would make up six per centum interest upon the amount of stock by them subscribed and paid for, from the time the same should have been actually paid, which Debentures were to be made payable in twenty years from the date thereof, and were to bear interest at the rate of six per centum per annum, payable half yearly out of the public revenues of this Province, and that nothing in the said Act contained should be construed to compel any Stockholder to accept Debentures for the stock held by him as aforesaid, or, in case of refusal to receive the same, to deprive him from being paid from the tolls and revenues of the Canal, according to the laws then existing having relation to the said Canal; And whereas by a certain Act of the Parliament of Upper Canada, passed in the seventh year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to provide for the permanent completion of the Welland Canal, and for other purposes therein mentioned*, provision is made for raising, by way of public loan, the sum of Two Hundred and Forty-five Thousand Pounds for the purposes of the said Act, and that the tolls received upon the said Canal, after deducting the amount required for the charges then made thereon by law, or so much thereof as might be necessary, should in the first place be applied to discharge the interest which should accrue upon the said sum of Two Hundred and Forty-five Thousand Pounds, and that the remainder of the income received by the said Company should be divided among the private Stockholders until it should equal six per cent. on the amount of their investments; And whereas by reason of difficulties arising from the state of the Provincial finances of Upper Canada aforesaid, a small part only of the said sum of Two Hundred and Forty-five Thousand Pounds, was actually raised, and the Canal was therefore not completed by means of the said loan; And whereas the said Canal is in progress of completion by means of other and larger sums of money received for that purpose than the sum provided to be raised under the said Act; And whereas therefore, the circumstances contemplated by the said Act, under which the said private Stockholders were to have received dividends from the income of the said Canal have not arisen and cannot now arise, and it is therefore expedient to repeal the said provision for the payment of such dividends; And whereas it is represented to be for the interest of the private Stockholders aforesaid that the said first in part recited Act should be repealed, and other provisions enacted in lieu thereof: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council, and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same,

That the said first in part recited Act, and the said Act of the Parliament of Upper Canada, in so far as the same relates to the division of the income of the said Canal, or any part thereof, amongst the private Stockholders, shall be and the same are hereby repealed, except in so far as the same repeal any former Act or Acts of the Parliament of Upper Canada or of this Province.

II. And be it enacted, That there shall be charged upon the Consolidated Revenue Fund of this Province, for the benefit of the private Stockholders in the said Welland Canal, the sum of One Hundred and Seventeen Thousand Eight Hundred Pounds, currency of this Province, with interest thereon, from the first day of January, in the year of our Lord one thousand eight hundred and forty-three.

III. And be it enacted, That it shall and may be lawful for the Governor of this Province in Council, to direct the Receiver General of this Province to issue such number of Debentures as may be required, to the private Stockholders in the Welland Canal Company, not exceeding the said sum of One Hundred and Seventeen Thousand Eight Hundred Pounds, currency, at a rate of interest not exceeding five per cent. per annum, if the said Debentures and Interest shall be payable in England, or not exceeding six per centum per annum, if the said Debentures and Interest shall be made payable in Canada; and that the Debentures or other Securities to be issued shall bear date the first day of January, in the year of our Lord one thousand eight hundred and forty-three, and the interest thereon shall be payable from thence on the first day of January next succeeding the issue thereof, and from thence half-yearly on the first day of July and the first day of January, in each year, until the principal sum shall be paid, and such principal sum shall be made payable in twenty years from the date of the said Debentures.

IV. And be it enacted, That it shall and may be lawful for the Governor of this Province in Council, to direct the issue of the said Debentures to the private Stockholders according to their respective claims, and such Debentures shall bear the rates of interest above mentioned, and shall be payable either in London or in this Province, as such private Stockholders shall respectively desire, and at such place therein as the Governor in Council shall direct and appoint: Provided always, that nothing in this Act contained shall be held to invalidate or make void any Debentures heretofore issued under the said first in part recited Act.

V. And be it enacted, That it shall and may be lawful for the Governor of this Province in Council to direct the substitution of the Debentures to be issued under this Act, in lieu of the said Debentures already issued, upon application of the party holding the same.

VI. And be it enacted, That so soon after the completion of the said Canal as the tolls received thereon for any one year shall amount to the sum of Forty-five Thousand Pounds, currency of this Province, there shall be charged upon the Consolidated Revenue Fund thereof an amount equal to six per centum per annum on the private stock subscribed from

the time the same has been paid in, for the benefit of the private Stockholders aforesaid, or their legal representatives.

VII. And be it enacted, That it shall be lawful for the Governor of this Province in Council, at any time after such receipt of tolls, to direct to be issued to such private Stockholders, or their legal representatives, Debentures for the amount of their respective claims, bearing interest and payable in the same length of time after their issue, and at the same places, respectively, as if the same were issued under the foregoing provisions of this Act to the private Stockholders aforesaid for the principal sum invested by them.

VIII. And be it enacted, That in case any certificate or certificates, or other documents, have been issued to any of the said private Stockholders, or their legal representatives or assigns, signifying that they or any of them are or shall be entitled to receive the back interest mentioned in the said first in part recited Act, or Debentures therefor, those who shall lawfully hold such certificate or other document, shall be entitled to the same payments or Debentures, and to none other than they would be entitled to under this Act if such certificates or other documents had never issued.

OPINION OF JUDGE MASON.

The sixth Section of the Act of the Provincial Parliament of Canada, in relation to the Welland Canal, passed in the 7th year of Victoria, provides "That as soon after the completion of said Canal as the tolls received thereon, for any one year, shall amount to the sum of £45,000 currency of this Province, there shall be charged upon the consolidated revenue fund an amount equal to six per cent per annum on the private stock subscribed from the time the same has been paid in for the benefit of the private Stockholders aforesaid, or their legal representatives."

The question is proposed, up to what period is the six per cent per annum to be calculated? If we look at this Section alone without reference to any other part of the Act, the answer appears to me to be very plain. The calculation is to be made up to the time when the amount is charged on the consolidated fund. If it is to stop short of that time, at what time is it to stop? There is nothing in the Section which indicates any other time, and no other can be inferred or presumed from the language employed, and the construction I have given must I think be adopted as the plain and obvious one, unless it is clearly inconsistent with other provisions of the Act.

I cannot find any clause or provision in the other parts of the Act, which show that a different period was contemplated. The 4th Section has been referred to as bearing on this question. It provides for issuing Debentures to the private Stockholders for the principal of their Stock, bearing interest at 6 per cent per annum from the 1st January, 1843.

And it is inferred from that Section that it was the intention of the Legislature to limit Debentures for the 6 per cent at that time, as otherwise the Shareholders would receive, for the portion of time running between the passage of the Act and the time of payment, double interest.

If such was the intention of the Legislature, it is very surprising that they should have left it entirely as a matter of inference to be gathered from other parts of the Act, instead of expressing it in clear and unequivocal terms. It would have been very easy to have stated that the amount should be calculated from the time the capital had been paid in until the 1st of January, 1843, or until the issuing of the Debentures for the capital with interest, and no dispute could then have possibly arisen. The absence of any such clause under the circumstances affords strong if not conclusive evidence that no such limitation of the 6 per cent per annum was contemplated.

The construction which would thus limit the allowance of the 6 per cent proceeds on the assumption that the Legislature meant that the private Stockholders should under no circumstances receive more than what would amount to 6 per cent interest on their capital, without any regard to the time at which such interest might be paid. But such an assumption it appears to me is entirely gratuitous. It is not warranted by any thing contained in the Act. The 6 per cent per annum is not given *as interest*, or by way of interest, but rather as a compensation or bonus for the loss of interest. The word "interest" does not appear in the Section. The provision is for an amount equal to 6 per cent per annum on the stock from the time it was subscribed and paid, which is to be charged on the consolidated fund for the benefit of the private Stockholders. It is in terms a charge for their benefit, and not merely an appropriation for the payment of a debt for which the Government was equitably bound.

The facts which appear on the face of the Act show, I think, that the construction I have given to this Section is not an unreasonable one. It appears from the Act itself, including the preamble, that the private Stockholders had paid their money towards the building of the Canal some time before the 7th year of William the 4th, that is before the year 1836,—that at the time of the passage of the Act, no interest on the monies thus paid had been received,—that the Government had taken the Canal out of the hands of the Stockholders, and recognised the equitable claim of the Stockholders on them for the amount they had thus paid, by issuing Debentures to them for such amounts with interest, but that as to the back interest, they postponed the payment of it for an indefinite period and until the revenues of the Canal should reach a sum considerably exceeding not only the principal sums advanced by the private Stockholders but also the sum of £245,000 in addition thereto, which the Government undertook to raise by loan for the purposes of the Canal. Should the Canal revenues reach the sum of £45,000, it would show that the enterprise had been successful, and be an omen of a much larger revenue in time to come, the whole of which would be received by the Government. It is therefore not unreasonable to suppose that the Legislature intended, if the private Stockholders yielded up all the prospective advantages to be derived from the revenues of the Canal,

to deal with them on liberal terms whenever the Canal revenues should warrant it, and instead of merely paying them a sum amounting in the aggregate to simple interest, to allow them an amount which altho' it would not place them in the same situation as if they had regularly received their interest, yet would compensate them in some degree for their losses in being so long kept out of it.

Such a supposition is certainly not an extravagant one. It would be creditable to the Legislature, and it would be in entire accordance with the letter of the Act. It shows a reason for its being couched in the language used, and also that the obscurity is only apparent, and arises from an erroneous view of the equities of the case, growing out of the fact that the Stockholders have since 1843 received interest on the principal.

But for this erroneous idea, there could be no question as to the meaning of the sixth Section, and I think it is manifest from a perusal of the whole Act including the preamble, that the obvious meaning is that which best accords with the intention of the Legislature.

I am therefore of the opinion that Stockholders are entitled under the Act to 6 per cent per annum on the amount of stock subscribed by them respectively from the time the same has been paid in, until the time when the charge is to be made on the consolidated fund.

JOHN L. MASON.

New York, 22d November, 1851.

CASE AND OPINION OF SAM. SHERWOOD, ESQ.

The private Shareholders of the Welland Canal made their subscriptions in about 1826, and paid in their subscription money,—the Government Stock eventually exceeded in amount that of the private Stockholders, and the Government, in consequence, retained the control,—the Canal was completed and commenced its operations,—no dividends however were made, but the Tolls were received by the Government. Several efforts were made at different periods to give the private Stockholders either a dividend or an equivalent for the funds they had invested.

In 1843, an Act was passed, intituled, "An Act to repeal a certain Act therein mentioned, and to make further provision for enabling the Provincial Government to purchase the Stock held by private parties in the Welland Canal." At that period the principal of the private Stockholders amounted to £117,800, which had been paid in about 17 years previous, and at 6 per cent per annum, would in 16 years and 8 months, have given cent per cent, or £117,800.

The apparent design of the Act was to fund the principal and interest, making £235,600, to issue Debentures for one half payable in 20 years, 6 per cent interest payable semi-annually or 5 per cent interest if payable in England.

And if the Canal should realize the amount represented, the Government would pay the other half, and accordingly the second section provides "that there shall be charged upon the consolidated revenue of this Province, for the benefit of the private Stockholders in the said Welland Canal, the sum of £117,800 currency of this Province, with interest thereon from the 1st day of January, 1843."

And the 6th Section provides for the payment of the other half, when the aggregate of the tolls should reach a given amount, viz: "That so soon after the completion of the said Canal, as the tolls received thereon for any one year shall amount to the sum of £45,000 currency of this Province, then shall be charged upon the consolidated revenue fund thereof, an amount equal to 6 per centum per annum on the private Stock subscribed, from the time the same has been paid in for the benefit of the private Stockholders aforesaid, or their legal representatives."

The 7th Section provides, "that Debentures shall be issued to such Stockholders for the amount of their respective claims, bearing interest and payable in the same length of time after their issue, at the same places" &c. as the previous Debentures.

It is quite certain that at the time of the passage of this Act in 1843, the interest at 6 per cent was equal in amount to the principal.

And that the Government deemed it wise to pay the Stockholders their principal and interest, and take the entire control and direction of the Canal.

The first class of Debentures were directed to be issued, and were issued, "for the principal sum invested" by the Stockholders.

The second class of Debentures are provided to be issued when the tolls should attain a certain sum.

The amount of each Debenture was not accurately known, and could not be given, but the data from which the computation is to be made is given.

The time when the Stockholder "paid in" the stock subscribed by him, is the commencement and the time when the tolls amount to £45,000 in any one year, is the time for issuing the Debentures.

The sum to be an amount equal to 6 per cent per annum on the Stockholders' subscriptions so paid in.

The Stockholders may not all have "paid in" on the same day, there may have been months and perhaps a year's difference, and the discrimination is made, by allowing to them respectively 6 per cent from the time when they actually "paid in."

When the Act was passed in 1843, the amount had doubled, and by the compromise apparently was intended to be made principal, disci-

minating only among the Stockholders as to the time of computation from their respective payments. Hence, the reading of the Act as to the second class, which gives 6 per cent per annum on the original principal from the payment of such principal to the issuing of the Debentures, and which are to be issued at the end of the year when the tolls reach £45,000 payable in 20 years from their date, carrying 6 per cent interest payable semi-annually.

In examining this Act of Parliament providing for the purchase of and remuneration to the private Stockholders of the Welland Canal, I have not been able to discover any ambiguity. The question raised is, how long is the 6 per cent to be allowed, for which the Debenture is to be issued?

It seems to be entirely plain, it must be allowed from the day the original Stock was "paid in" to the end of the year, when the tolls should reach £45,000, and when the Debenture should be dated, and contain the residue of the contract.

The time for the beginning is fixed by the words when "paid in"—the end is fixed by the words "so soon after the tolls amount to, &c." The Governor shall "after receipt of such tolls direct to be issued the "Debentures, &c." There is no exclusion of a portion of the time "from the paying in" to the issuing of the Debenture.

I am of opinion that the direction is imperative that "so soon" as the tolls in one year reach £45,000, 6 per cent per annum from a given day shall be charged to the consolidated revenue fund, and the Governor shall issue his Debentures therefore, payable as prescribed by the Statute.

S. SHERWOOD.

New York, 25th November, 1851.

OPINION OF MARSHAL S. BIDWELL, ESQ.

I have examined the Statute of Canada, 7 Vic. Cap. 34, with reference to the question to what time the per centage mentioned in the sixth clause is to be computed.

I am of opinion that it is to be computed and allowed to the period when the tolls shall amount to £45,000 in one year.

I think that this is the fair import of the language which the Legislature has used, and that it is not controlled by other provisions of the law, or by the circumstances of the case. The letter, on the contrary, furnish reasons for a construction favorable to the Stockholders. Among these circumstances, the following may be mentioned; most of the Stockholders are foreigners and non-residents, and did not share in the incidental benefits, which men of business and owners of property in the Province, derived from the work; most of them had paid in their money under an express pledge that the work should not be taken by the Govern-

ment without reimbursing the Stockholders for the money which they paid, and an advance of 25 per cent on it, nor unless they had, on an average, received 12½ per cent annually; the enterprise was hazardous, and, if successful, fairly entitled those engaged in it to profits in proportion to the risk run: it was of public importance and utility, and those by whose means and at whose expense and risk it had been prosecuted so nearly to completion, deserved a liberal and indulgent consideration from the Legislature and Government: the prospects of a speedy completion and of ultimate remuneration, were, at the time when the law was passed, becoming more and more favorable; the Government considered it of importance for public purposes to take the entire control of the work, and by this law and previous legislation had assumed the dominion and exclusive control of the work, including the regulation of tolls, salaries and expenses, and had virtually annulled the rights of the Stockholders, on terms prescribed by itself, which creates a presumption, (in justice both to the rights of the Stockholders and to the equity and honor of the Government,) that the terms were intended to be so liberal as to preclude all doubt of their acceptance; and finally, the preamble proves that the law, according to its true construction, was supposed to be "for the interest of the private Stockholders," which it would not have been, as compared with the law of 1841, if the per centage was to be restricted to 1st January, 1843.

If, in the consideration of this question, analogous cases were to be regarded, I think that the conclusion would be in favor of a liberal construction.

The Government and the private Stockholders stood much in the relation of co-partners to each other; one of whom by the exercise of a paramount authority takes to himself the whole of the partnership property and business for his own benefit, before any dividend has been received by his co-partner: he would justly be chargeable with all the disbursements of his co-partner and the current rate of interest to that time, on the ground that "it is but natural justice that he who has the use and benefit of another's money should make compensation for it," and, if payment of such principal sum and interest were, for his convenience, deferred, interest would be charged on the aggregate sum. This is a general principal of jurisprudence, enforced equally in Courts of Law and Equity and Admiralty. 2 Hagg Adm. R. 137, Dundee Holmes.

Under the most liberal construction, the Stockholders will receive no adequate indemnity, for then, the enterprise has been unfortunate. All the benefits of the work have been reaped by the people and government of the Province. If there is any ambiguity in the law, this circumstance presents a legitimate consideration in favor of a liberal construction, as being most equitable, most probable, and most honorable to the legislature. It is to be presumed that they intended to deal fairly with their co-partners, when, by the exercise of Sovereign Authority, they took their property for public purposes.

MARSHAL S. BIDWELL.

New York, October, 1852.

Dundee, Holmes, 2 Hagg Adm. R. 137.

In a cause of collision where payment of a sum for damage, interest and costs reported to be due had been delayed by the party liable, the other party is entitled to interest on the whole sum from fifteen days after the date of such report, and, Stat. 53 Geo. 3, Cap. 159, s. 1, limiting the liability of owners to the value of the ship, appurtenances and freight applies only to the original claim for damage and extends not to costs and interest.

OPINION BY LORD STOWELL.

" The justice of this case lies entirely with the Counsel who have argued on the part of those who have sustained the injury, and who apply for full restitution. It is objected in the first place that £350 is stated for interest, and that in the further report, interest is allowed on the whole amount of the former report including that item. This, it is argued, is compound interest,—interest upon interest, and ought not to be allowed. To which, it is answered with perfect justice and conformity to the practice of all courts, that where interest is so settled, it shall bear interest thereon, and that the same shall not be deemed a compound interest, charging the party with an unfair pressure in such account. It is agreeable to the practice of merchants, and agreeable to the practice of the Court of Chancery, and has been so held in this Court, where interest is made up, it then becomes principal and bears interest as part of the principal."

(This was the last reported decision of Lord Stowell: he had been about 30 years Judge of the High Court of Admiralty, having been previously a distinguished Judge in the Ecclesiastical Courts. He is considered to have been one of the greatest Jurists of Europe.)

CASE SUBMITTED FOR THE OPINION OF THE LAW OFFICERS OF THE CROWN IN ENGLAND.

About the years 1827, 1828 and 1829, several sums of money were raised in America, Canada and England, amounting together to the sum of £117,800, Canada Currency, towards making a Canal in Canada, from Lake Erie to Lake Ontario, called the Welland Canal. Large sums were also subscribed by the Government of Canada, for the same purpose as public Shareholders in the Company.

In the year 1843 more money was required to place the Canal in an efficient state towards which the private Shareholders were unwilling to make any further contribution.

In that year, therefore, an Act of the Provincial Legislature was passed, intituled, "An Act to repeal a certain Act therein mentioned and to make further provision for enabling the Provincial Government to purchase the Stock held by private parties in the Welland Canal." A copy of the Act is sent herewith. By the 4th clause of that Act, the Government was authorized to issue Provincial Debentures for the sum of £117,800, Canada Currency, in repayment of the Capital subscribed by

private Shareholders. These Debentures have been issued and interest at the rate of £6 per cent per annum in Canada, and £5 per cent in England has been paid upon them from the 1st January, 1843. By clause 6th in the same Act, provision was made for payment to the private Shareholders of interest upon their Capital as follows :

" And be it enacted, that so soon after the completion of the said Canal as the tolls received thereon for any one year shall amount to the sum of £45,000, Currency of this Province, there shall be charged upon the consolidated revenue thereof, an amount equal to £6 per cent per annum on the private Stock subscribed from the time the same has been paid in for the benefit of the private Stockholders aforesaid, or their representatives."

The Tolls reached the required amount of £45,000, in 1851.

Government proposed to pay interest on the Capital at 6 per cent up to the 1st January, 1843 only, and the same amounting to £107,943, 4s. 1d. has been received by the private Shareholders in Provincial Government Debentures, bearing interest from 1st January, 1852, but these Debentures were received under protest.

The Shareholders therefore contend that they have not received all that is strictly due to them, as either they are entitled to receive an amount equal to £6 per cent per annum from the time their Capital was subscribed to the time when the tolls amounted to £45,000, or they were entitled to receive an amount equal to £6 per cent per annum from the time their Capital was subscribed to the 1st January, 1843, which would not be the case if the interest were not received until 1852. Your opinion is therefore requested on the following points :

1. Whether the letter of the Act entitles the Shareholders to claim interest up to the time when the tolls amounted to £45,000, that is, to January, 1852.

2. If not, what is the precise construction to be put upon the words, "an amount equal to 6 per cent per annum on the private Stock subscribed from the time the same has been paid in".

3. Do those words imply such a sum as shall being paid now in 1852, be equivalent to an amount of 6 per cent per annum on the Stock paid in 1843, when the Capital was discharged.

OPINION OF SIR F. THESIGER.

We are of opinion, that in the absence of any express limitation, of the time up to which the per centage was to run ; the contingency on which the per centage was to become payable, defined also the period up to which it was to be calculated.

The construction which places this limit in 1843, has no warrant in the words of the Act ; and it is further negatived by the probability

that any sum already defined when the clause was framed would either have been stated as a specified amount, or as a per centage to be calculated during a specified period. These difficulties vanish, if, adopting the natural construction, the clause is taken to have contingently guaranteed a sum incapable at the period of complete definition; and the accumulation of which during such time as the contingency remained unfulfilled, secured the Shareholder against loss from delays in the carrying out of the work. For it is evident that while the ultimate completion of the undertaking was rendered tolerably certain by the amount of public money embarked in it, yet delays inevitable or otherwise, might have been interposed after it came under Government management, which, but for some such proviso, would have impaired indefinitely the value of a compensation, limited by a definite period; though payable at an indefinite one.

On these grounds we are of opinion, that the Shareholders are entitled to an amount equal to 6 per cent per annum on the private Stock subscribed from the time it was paid in, up to the 31st December, A. D. 1851.

FRED. THESIGER.
H. J. BUSHBY.

24th. August, 1852.

(Copy.)

London, 15th October, 1852.

The Hon. Wm. Hamilton Merritt.

Dear Sir,—We have duly received your letter of the 13th ultimo, and have now much pleasure in forwarding the inclosed copy of an opinion in which the Solicitor General, Sir Fitzroy Kelly, has expressed himself in favor of the claims of the Welland Canal Shareholders.

We have not yet been able to procure the opinion of Sir Alex. Cockburn, which we will take the earliest opportunity of transmitting to you when obtained.

We are Dear Sir,
Your very obedient Servants,
(Signed.) BOSANQUET, FRANKS & Co.

OPINION OF SIR FITZROY KELLY & H. J. BUSHBY, ESQ.

We are of opinion that the Stockholders are entitled by the Act to an amount equal to six per cent per annum on the capital from the time it was subscribed up to the period of the tolls amounting to £45,000.

(Signed.) FITZROY KELLY.
H. J. BUSHBY.

London, 5th November, 1852.

The Hon. Wm. Hamilton Merritt.

Dear Sir,—Referring to our letter of the 15th ultimo, of which the annexed is a duplicate, we have now the pleasure to enclose a Copy of the opinion of Sir Alex. E. Cockburn, which is strongly in favor of the Claims of the Welland Canal Shareholders. We also forward herewith a Statement of the Case on which the above opinion, together with those of the Attorney, and Solicitor General already transmitted, were delivered.

We remain, Dear Sir,
Your faithful and obedient Servants,
BOSANQUET, FRANKS & Co.

OPINION OF SIR ALEXANDER E. COCKBURN.

[Copy.]

We are of opinion that the Act entitles the Shareholders to claim 6 per cent on the Capital subscribed, from the time when it was paid in, not merely up to the 1st January, 1843, but to the period when the tolls amounted to £45,000.

(Signed,)

A. E. COCKBURN.
H. J. BUSHBY.